

REMARKS

Claims 4 to 7 are pending in the application.

~~With respect to the objection to the drawings for the reasons indicated on the form PTO~~
948, which accompanied the present Office Action, reconsideration is respectfully requested on the following grounds.

Replacement drawings believed to overcome the objections noted by the draftsman have been submitted herewith. No new matter has been added with the replacement drawings.

The claim for priority in the first paragraph has been corrected as requested by the Examiner.

With respect to the rejection to claims 1 to 4 under 35 U.S.C. 112, first paragraph, for being non-enabling, reconsideration by the Examiner is respectfully requested on the following grounds.

Claims 1 to 3 have been canceled.

Claim 4 has been amended to indicate that expression of the gene construct is regulated by a developmentally regulated promoter, wherein the promoter is expressed during stamen development.

The cancellation of claims 1 to 3 is believed to render the Examiner's rejection of these claims moot. The amendment to claim 4 as presented above is believed to overcome the Examiner's rejection of claim 4 under 35 U.S.C. 112, first paragraph for being non-enabling.

With respect to the rejection to claims 1 to 3 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description, reconsideration by the Examiner is respectfully requested on the following grounds.

The cancellation of claims 1 to 3 is believed to render the Examiner's rejection of these claims under 35 U.S.C. 112, first paragraph, as failing to comply with the written description, moot.

With respect to the rejection to claims 1 to 4 under 35 U.S.C. 112, second paragraph, as being indefinite, reconsideration by the Examiner is respectfully requested on the following grounds.

The Examiner alleges that in claim 4 it is not clear if the plant cell into which the construct is introduced is from a male sterile plant or a male fertile plant. Applicant wishes to point out that the preamble of claim 4 states that the plants are cytoplasmic male sterile plants. Thus, the construct is introduced into a cytoplasmic male sterile plant cell.

The Examiner further alleges that claim 4 is indefinite in the recitation of "unedited form of an atp6 gene of *Brassica napus*". However, Applicant wishes to point out that claim 4 is directed to an edited form of an atp6 gene. Clarification of the Examiner's rejection is respectfully requested.

Claim 4 has been amended to indicate that the construct consists of sequence encoding a mitochondrial transit peptide fused upstream of and in frame with a DNA sequence corresponding to an edited form of an atp6 gene transcript. Support for this amendment can be found on page 11, lines 7-11 and page 12, lines 4-6 of the application.

Further, in response to the Examiner's question as to whether *Brassica napus* has more than one atp6 gene, Applicant wishes to inform the Examiner that *B. napus* has only one copy of the atp6 gene.

The cancellation of claims 1 to 3 is believed to render the Examiner's rejection of these claims under 35 U.S.C. 112, second paragraph moot. The argument for and amendment of claim

4 as presented above is believed to overcome the Examiner's rejection of claim 4 under 35 U.S.C. 112, second paragraph for being indefinite.

With respect to the rejection to claims 1 to 4 under 35 U.S.C. 112, second paragraph, as being incomplete, reconsideration by the Examiner is respectfully requested on the following grounds.

Claim 4 has been amended to indicate that expression of the gene construct is regulated by a developmentally regulated promoter, wherein the promoter is expressed during stamen development.

The cancellation of claims 1 to 3 is believed to render the Examiner's rejection of these claims under 35 U.S.C. 112, second paragraph moot. The amendment of claim 4 as presented above is believed to overcome the Examiner's rejection of claim 4 under 35 U.S.C. 112, second paragraph for being incomplete.

New claims 5 to 7 reiterate the Preliminary Amendment of February 14, 2002.

The amendments to Table 1, appearing on pages 14-15 of the application, to remove legend points 3 and 4, correct typographical errors which occurred during the drafting of the application.

The amendment to paragraph [0048] corrects a typographical error where C4-ORF should be A9-ORF. Support for this correction can be found in paragraph [0024] of the application.

The amendment to paragraph [0055] corrects a typographical error where "AP3/A9-A6a" should be "AP3/A9-A6u". Support for this correction can be found throughout the application, for example at page 14, Table 1.

The Applicants submit that no new matter has been added by the present amendments.

It is submitted, therefore, that the claims are in condition for allowance. Reconsideration of the Examiner's rejections is respectfully requested. Allowance of claims 4 to 7 at an early date is solicited.

~~In the event that there are any questions concerning this amendment or the application in~~
general, the Examiner is respectfully urged to telephone the undersigned so that prosecution of this application may be expedited.

Respectfully submitted,

Date: Nov. 25, 2003

By: 

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Enclosures